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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,702	11/20/2001	Gary L. Cummings	A8174	9095

7590 10/31/2003

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/31/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 9

This is a communication from the examiner in charge of your application.
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OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 7/28/03
- ☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 69-91 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) 72, 75, 77, 79-82 is/are allowed.
- ☒ Claim(s) 69-71, 73, 74, 76, 78, 83-86, 91 is/are rejected.
- ☒ Claim(s) 90 is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 69-71, 73, 74, 76, 78, 83-85, 87, 88 and 91 are rejected under 35 U.S.C. 102(b) as being anticipated by Chan et al 5,464,623.

The rejection of record is maintained.

Only trace amounts of moisture are retained; in fact, enhanced stability is provided with less than 2% ammonium sulfate, while Mg sulfate, less than 2%, absorbs the trace water, while anticaking is at about 0.1% (col. 4, lines 5-26). We can then be assured moisture, if present, is below the 0.1% of specified components, as it is only in trace amounts. Likewise with solvent. Additionally any solvent, including moisture, as water is list as solvent (col. 4, lines 43-47), is removed (col. 5, lines 55-88), by direct heat, if necessary. The processing aids instantly claimed are unspecified, and not defined, only exemplified, in the specification. Thus, broadly interpreted, pluronics of Chan are processing aids, as they would aid in the manufacture and in the distribution of acephate pellets, both constituting processes. Dependent claims are dependent on the originally rejected dependent claims, so they also are still rejected, as the 97% acephate, with required processing aid is shown by Chan, and the added components do not interfere with the acephate function as an insecticidal pellet.

Claims 69, 73, 76, 78, 86, 89 are rejected under 35 U.S.C. 102(b) as being anticipated by Chan et al 5,100,667.

Here we see 97% acephate with 0.18% moisture; the instant processing aid in not disclosed as essential. Surfactants with processing aid, and 92.8% acephate, and <

.5% moisture are also evident (Table) the surfactants are considered (col. 4, lines 28-56) as processing aids, as explained above at Chan.

Claims 86, 89 requires no processing aid; Chan shows it (Table, # 6, with O moisture, O surfactant, bulk density about 26 (25).

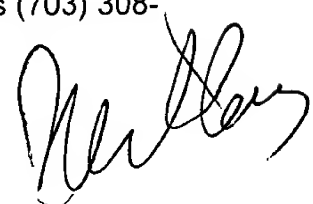
Applicant's arguments filed on 7/28/03 have been fully considered but they are not persuasive. Applicant's arguments, where non-persuasive, are addressed above – with amendment, where persuasive, rejections have been withdrawn, but Chan introduced. The claims 86, 89 still require no process aids.

The % acephate is presumed to be based on the total pellet weight as applies to claim 70, for example.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Levy/LR
October 21, 2003

NEIL S. LEVY
PRIMARY EXAMINER